

## PART 50-201—GENERAL REGULATIONS

Sec.

- 50-201.1 The Walsh-Healey Public Contracts Act.
- 50-201.2 Administration of the Act.
- 50-201.3 Insertion of stipulations.
- 50-201.4 Statutory exemptions.
- 50-201.101 Employees affected.
- 50-201.102 Overtime.
- 50-201.103 Dealer as agent of undisclosed principal.
- 50-201.104 Protection against unintentional employment of underage minors.
- 50-201.105 Hours worked.
- 50-201.201 Breach of stipulations.
- 50-201.301 Agency regulations.
- 50-201.501 Records of employment.
- 50-201.502 Record of injuries.
- 50-201.601 Requests for exceptions and exemptions.
- 50-201.602 Decisions concerning exceptions and exemptions.
- 50-201.603 Full administrative exemptions.
- 50-201.701 Definition of "person."
- 50-201.1101 Minimum wages.
- 50-201.1102 Tolerance for apprentices, student-learners, and handicapped workers.
- 50-201.1201 [Reserved]
- 50-201.1202 Complaints.
- 50-201.1203 Other contracts.

AUTHORITY: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40; 108 Stat. 7201.

### **§50-201.1 The Walsh-Healey Public Contracts Act.**

The Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), hereinafter referred to as the Act, was enacted "to provide conditions for the purchase of supplies and the making of contracts by the United States." It is not an act of general applicability to industry. The Supreme Court has described it as an instruction by the Government to its agents who were selected and granted final authority to fix the terms and conditions under which the Government will permit goods to be sold to it. Its purpose, according to the Supreme Court "was to impose obligations upon those favored with Government business and to obviate the possibility that any part of our tremendous national expenditures would go to forces tending to depress wages and purchasing power and offending fair social standards of employment." ("Perkins v. Lukens Steel Co.," 310 U.S. 113, 128 (1940); "Endicott John-

son Corp. v. Perkins," 317 U.S. 501 (1943).) To this end, the Act requires those who enter into contracts to perform Government work subject to its terms to adhere to specifically prescribed representations and stipulations as set forth in 41 CFR 50-201.1 pertaining to qualifications of contractors, minimum wages, overtime pay, safe and sanitary working conditions of workers employed on the contract, the use of child labor or convict labor on the contract work, and the enforcement of such provisions. Except as otherwise specifically provided, these representations and stipulations are required to be included in every contract "for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding \$10,000" which is made and entered into by an agency of the United States or other entity as designated in section 1 of the Act, hereinafter referred to as "contracting agency." Contractors performing work subject to the Act thus "enter into competition to obtain Government business on terms of which they are fairly forewarned by inclusion in the contract." ("Endicott Johnson Corp. v. Perkins, supra," 317 U.S. at 507.) The Act also provides for enforcement of the required representations and stipulations by various methods. Certain exemptions from the application of the Act are provided in section 9 of the statute. Other exemptions, variations, and tolerances may be provided under section 6 of the statute by the Secretary of Labor or the President.

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### **§50-201.2 Administration of the Act.**

(a) The Secretary of Labor is authorized and directed to administer the provisions of the Act, to make investigations, findings, and decisions thereunder, and to make, amend, and rescind rules and regulations with respect to its application (see sections 4 and 5). The Supreme Court has recognized that the Secretary may issue rulings defining the coverage of the Act. ("Endicott Johnson Corp. v. Perkins, supra".) According to the Court (*ibid.*), in the statute as originally enacted "Congress submitted the administration of the Act to the judgment of the

Secretary of Labor, not to the judgment of the courts.” An amendment to the Act in 1952 added specific provisions for judicial review (see section 10). The Secretary has promulgated regulations to carry out provisions of the Act, which are set forth elsewhere in this chapter (Part 50-201 (General Regulations); Part 50-202 (Minimum Wage Determinations); Part 50-203 (Rules of Practice); and Part 50-204 (Safety and Health Standards)). The Secretary of Labor has delegated to the Administrator of the Wage and Hour Division through the Assistant Secretary for Employment Standards the authority to promulgate regulations and to issue official rulings and interpretations. So long as such regulations, rulings, and interpretations are not modified, amended, rescinded, or determined by judicial authority to be incorrect, they may be relied upon as provided in section 10 of the Portal-to-Portal Act of 1947 (61 Stat. 84, 29 U.S.C. 251, et seq., discussed in 29 CFR Part 790). Furthermore, these interpretations are intended to indicate the construction of the law which the Department of Labor believes to be correct and which will be followed in the administration of the Act unless and until directed otherwise by Act of Congress or by authoritative rulings of the courts. (“*Skidmore v. Swift & Co.*”, 323 U.S. 134 (1944), “*Roland Co. v. Walling*”, 326 U.S. 657 (1946); “*Endicott Johnson Corp. v. Perkins*, *supra*”, and “*Perkins v. Lukens Steel Co.*, *supra*”).

(b) The courts have held that the “interpretations of the Walsh-Healey Act and the regulations adopted thereunder, as made by the Secretary of Labor acting through his Administrator, are both correct and reasonable.” (“*Jno. McCall Coal Company v. United States*,” 374 F. 2d 689, 692 (C.A. 4, 1967); see also “*United States v. Davison Fuel and Dock Company*,” 371 F. 2d 705, 711-714 (C.A. 4, 1967).) These policies are designed to protect not only employees but also the competitive interest of all firms qualified to compete for covered contracts.

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### § 50-201.3 Insertion of stipulations.

Except as hereinafter directed, in every contract made and entered into by an executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States, for the manufacture or furnishing of materials, supplies, articles, and equipment, the contracting officer shall cause to be inserted or incorporated by reference in such invitation or the specifications and in such contract, the following stipulations:

#### REPRESENTATIONS AND STIPULATIONS PURSUANT TO PUBLIC LAW 846, 74TH CONGRESS, AS AMENDED

(a) All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract.

(b) No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 40 hours in any 1 week unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor: *Provided, however*, That the provisions of this stipulation shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of section 7 of an act entitled “The Fair Labor Standards Act of 1938”: *Provided, further*, That in the case of such an employer, during the life of the agreement referred to the applicable overtime rate set by the Secretary of Labor shall be paid for hours in excess of 12 in any 1 day or in excess of 56 in any 1 week and if such overtime is not paid, the employer shall be required to compensate his employees during that week at the applicable overtime rate set by the Secretary of Labor for hours in excess of 40 in any 1 week.

(c) No person under 16 years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies,